

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EMILEE MCGOVERN,
Plaintiff,

- against -

GRABIEN, INC..

Defendant.

Docket No. 18-cv-2671

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Emilee McGovern (“McGovern” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Grabien, Inc. (“Grabien” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of activist David Hogg. The photograph is owned and registered by McGovern, an Florida-based professional photographer. Accordingly, Plaintiff seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and This Court has subject matter jurisdiction over This action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in This District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. McGovern is a professional photojournalist having a usual place of business at 2025 SW 81 Way, Davie, Florida 33324.

6. Upon information and belief, Grabien is a foreign corporation duly organized and existing under the laws of Delaware with a place of business at the 257 Grand Street, #1113, Brooklyn, New York 11211.

7. Defendant owned and operates the website at the URL: <https://.grabien.com> (the “Website”).

8. Defendant is a for-profit entity.

9. Defendant publishes and distributes, for profit, news and entertainment content on the Website.

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

10. McGovern photographed David Hogg after the Parkland School Shooting tragedy. A true and correct copy of the Photograph is attached hereto as Exhibit A.

11. McGovern is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

12. The Photograph was timely registered with the U.S. Copyright Office and was given Copyright Registration Number VA 2-099-217, effective as of April 17, 2018. A true and correct copy of the registration certificate for Copyright Registration Number VA 2-099-217 is attached hereto as Exhibit B.

B. Defendant’s Infringing Activities

13. On or about March 8, 2018, Defendant published for download and distribution a video on the Website using the Photograph as the video's cover image. See <https://grabien.com/file.php?id=347929> (the "Video").

14. Defendant's Video prominently featured the Photograph. True and correct screenshots of the photograph as they appear on the Website is attached hereto as Exhibit C.

15. Defendant did not obtain a license from Plaintiff to display the Photograph on the Video or on the Website.

16. Defendant did not have Plaintiff's permission or consent to publish and distribute the Photograph on the Video or on the Website.

17. Prior to publishing the Photograph on the Website, Defendant did not communicate with Plaintiff.

18. Subsequent to publishing the Photograph on the Website, Defendant did not communicate with Plaintiff.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST GRABIEN)
(17 U.S.C. §§ 106, 501)

19. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-18 above.

20. Defendant infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website.

21. Defendant is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

22. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

23. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

24. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

25. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

26. Defendant's conduct, described above, is causing, and unless enjoined and restrained by This Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Grabien be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Defendant Grabien be ordered to remove the Photograph from the Website.
3. That, with regard to the First Claim for Relief, Plaintiff be awarded either: (a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or (b)

alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;

4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
5. That Plaintiff be awarded her costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
May 4, 2018

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